

FILED
MISSOULA, MT

2006 OCT 24 PM 3 02

PATRICK E. DUFFY

BY _____

DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

MISSOULA DIVISION

JESSE DAVID SEDLER,)	CV-05-31-M-DWM
)	
Petitioner,)	
)	
vs.)	ORDER
)	
ATTORNEY GENERAL FOR THE)	
STATE OF MONTANA,)	
)	
Respondent.)	
_____)	

United States Magistrate Judge Jeremiah C. Lynch entered Findings and Recommendation (dkt #7) in this matter on September 26, 2006. Petitioner Sedler timely objected and so is entitled to de novo review of the record. 28 U.S.C. § 636(b)(1).

Sedler filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. He is a state prisoner proceeding *pro se* and *in forma pauperis*. There is no need to recount the factual details of the case as they are familiar to the Parties.

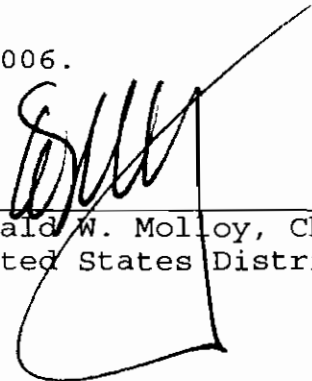
I concur with Judge Lynch's Findings. The Montana Supreme Court's decision complied with the standards set forth by 28 U.S.C. § 2254(d)(1) and (2): it was not contrary to federal law and it was based upon a reasonable determination of the facts in lights relative to the pertinent evidence. Indeed, the Montana

Supreme Court's analysis was objectively reasonable. See *Lockyer v. Andrade*, 538 U.S. 63, 75 (2003). This conclusion applies to Sedler's claims of innocence, ineffective assistance of counsel, the erroneous oral instruction on the part of the trial court, and defamation. As decided by the Montana Supreme Court and Judge Lynch in his Findings and Recommendation, these claims have no merit.

For these reasons, pursuant to 28 U.S.C. § 2253(c), Sedler is not entitled to a certificate of appealability. Sedler has not made "a substantial showing of the denial of a constitutional right" where the courts have properly addressed and denied his claims. *Hohn v. United States*, 524 U.S. 236 (1998). It is not the case here that "jurists of reason would find it debatable whether the petition states a valid claim of denial of a constitutional right." *Lambright v. Stewart*, 220 F.3d 1022, 1026 (citation omitted). Therefore, a certificate of appealability is denied.

Thus, based on the foregoing, IT IS HEREBY ORDERED that Judge Lynch's Findings and Recommendations (dkt #7) are adopted in full: Sedler's Petition and Amended Petition (dkt #1 and 5) are DENIED and a certificate of appealability is DENIED.

DATED this 24th day of October, 2006.


Donald W. Molloy, Chief Judge
United States District Court